

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-42 Caption [use short title] _____

Motion for: Unopposed One-Business-Day Extension ACLU v. Clapper
of Deadline to File Supplemental Briefing to
Coincide With Deadline to Oppose Motion

Set forth below precise, complete statement of relief sought:

Extension from July 24, 2015, to July 27, 2015, of
Government's deadline to file supplemental briefing
pursuant to the Court's June 9 order, to coincide with
Government's July 27 deadline to oppose ACLU's
preliminary injunction motion dated July 14, 2015

MOVING PARTY: James Clapper, et al.

☐ Plaintiff ☒ Defendant
☐ Appellant/Petitioner ☒ Appellee/Respondent

OPPOSING PARTY: ACLU, et al.

MOVING ATTORNEY: David S. Jones

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Alex Abdo

U.S. Attorney's Office - S.D.N.Y., 86 Chambers St.,
Third Floor, New York, NY 10007
212-637-2739; david.jones6@usdoj.gov

American Civil Liberties Union Foundation
125 Broad Street, 18th Floor, New York, NY 10004
212-607-3300; aabdo@aclu.org

Court-Judge/Agency appealed from: U.S. District Court - S.D.N.Y. (Hon. William H. Pauley)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain): _____

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below?

☐ Yes ☐ No
☐ Yes ☐ No

Has this relief been previously sought in this Court?

Requested return date and explanation of emergency: _____

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☒ Yes ☐ No If yes, enter date: Argument was held on 9/2/2014

Signature of Moving Attorney:

s/ David S. Jones

Date: 7/17/2015

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs-Appellants,

v.

James R. Clapper, in his official capacity as
Director of National Intelligence, *et al.*,

Defendants-Appellees.

No. 14-42

**UNOPPOSED MOTION FOR ONE-BUSINESS-DAY EXTENSION OF
DEADLINE TO FILE SUPPLEMENTAL BRIEFING TO COINCIDE
WITH DEADLINE FOR OPPOSITION TO MOTION**

Pursuant to FRAP 27, defendants-appellees James R. Clapper, Keith B. Alexander, Charles T. Hagel, Eric H. Holder, and James B. Comey, or their respective successors in office, hereby respectfully move the Court for a 3-day extension of time, to and including July 27, 2015, to file the supplemental brief required by the Court's order dated June 9, 2015. This motion is unopposed, and good cause exists for granting the extension for the reasons set forth below:

1. On May 7, 2015, this Court issued its decision in the captioned appeal, holding that the National Security Agency's court-approved collection of telephony metadata business records from telecommunications companies was not authorized by the statute upon which other Article III judges and the Government relied in authorizing and carrying out that important national security program. The panel subsequently ordered the parties to submit supplemental briefs of up to 20 pages by July 24, 2015, addressing the possible effect on this litigation of legislative developments including the passage of the USA FREEDOM Act, Pub. L. 114-23 (2015).

2. On July 14, 2015, ACLU filed a "motion for preliminary injunction" asking this Court to issue an injunction barring the Government from specified conduct during the 6-month transition period established by the USA FREEDOM Act. The ACLU's motion asked the Court to deem or accept their July 14 motion as also constituting plaintiffs' supplemental briefing that the Court's June 9 order directed be filed by July 24. Pl. Mot. 2 n.1.

3. The Government's opposition to ACLU's preliminary injunction motion is due on July 27, 2015, by operation of the Federal Rules of Appellate Procedure. Specifically, FRAP 27(a) makes responses to motions due within 10 days after service unless the Court shortens or extends the time, and FRAP 26(c) allows three additional days after service "unless the paper is delivered on the date of service stated in the proof of service." FRAP 26(c) specifies that papers that are served electronically, as occurred here, are "not treated as delivered on the date of service stated in the proof of service." Thirteen days after July 14 is July 27, 2015.

4. The Government would prefer to file one combined paper opposing ACLU's motion, and also constituting the supplemental briefing previously directed by the Court. The importance of the issues presented, the additional issues raised in ACLU's July 14 motion, and the numerous governmental deliberations that will be required to finalize our filing make it impracticable to file a response before the July 27 motion opposition deadline.

5. On Thursday, July 16, 2015, undersigned counsel sought consent for this limited extension request from ACLU counsel Alex Abdo and Jameel Jaffer. Plaintiffs conveyed their consent to our request by email the morning of July 17.

CONCLUSION

For the foregoing reasons, we respectfully request that the deadline for the Government to submit the supplemental briefing previously directed by the Court be extended from July 24, 2015, to July 27, 2015, so as to coincide with the Government's opposition to plaintiffs' July 14 preliminary injunction motion.

Respectfully submitted,

PREET BHARARA

United States Attorney for the
Southern District of New York

/s/ David S. Jones

DAVID S. JONES

(212) 637-2739

Assistant U.S. Attorney

86 Chambers Street

Third Floor

New York, NY 10007

July 17, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2015, I electronically filed the foregoing Unopposed Motion for One-Business-Day Extension of Deadline to File Supplemental Briefing to Coincide With Deadline for Opposition to Motion with the Clerk of the Court by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ David S. Jones
DAVID S. JONES